

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

THE HORACE BUSHNELL MEMORIAL
HALL CORPORATION

Employer ¹

and

LOCAL 919, UNITED FOOD & COMMERCIAL
WORKERS UNION, AFL-CIO

Petitioner

Case No. 34-RC-1896

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. The Employer, a Connecticut corporation with a facility located on Capital Avenue in Hartford, Connecticut, is engaged in the operation of a performing arts theater which presents theatrical, cultural, and community events. The Petitioner seeks to represent a unit composed of approximately 16 part-time bartenders who currently

¹ The name of the Employer appears as amended at the hearing.

serve alcoholic beverages during events at the facility. The Employer has moved to dismiss the petition on the grounds that the petitioned-for unit "will cease to exist as of June 16, 2001."

The record reveals that the Capital Avenue's facility is currently undergoing a substantial expansion, scheduled for completion on November 26, 2001, which will increase its size from 90,000 square feet to 180,000 square feet. The existing facility currently contains offices, a Grand Foyer, a 2819 seat theater and various bars. The expansion will add a Great Hall, a 918 seat theater/auditorium, a box office, a gift shop, a private dining suite, a café, and additional bars. Although the Employer has been employing part-time bartenders to serve alcoholic beverages during performances, it has been providing limited food service and snacks through the services of a private caterer.

In September, 2000, the Employer began to inquire about "outsourcing" its food services at the addition's new café. On January 8, 2001, the Employer hired a consultant to study the feasibility of only providing food services through local catering contractors. By letter dated February 14, 2001, the consultant submitted an initial draft of its study which noted that "[a] café only contract may not generate credible bids" and recommended that this problem "could be ameliorated if the contractor provides alcoholic beverage service... ." By letter dated March 5, 2001, the consultant apparently finalized its study, which noted that without the addition of alcoholic beverages the economic viability of a successful catering operation "is very fragile," and "advocate[d] putting all food and beverage services into one package."

On March 21, 2001, the Employer's Chief Financial Officer, its Senior Director, its Director of Facility Sales and Services, and its Manager of Facility Sales and Services met to consider the consultant's recommendation and decided to "outsource" both food and beverage services. Pursuant to this decision, by letters dated May 4, 2001, the Employer submitted a separate "Request for Proposal" to 13 caterers, inviting them to tour the Employer's facility on May 15, 2001, and submit bids by May 25, 2001. On

May 15, 2001, 9 or 10 caterers toured the facility, at which time they were informed that the deadline for submitting bids was extended to June 1, 2001.²

The record indicates that the Employer's final performance for the 2000/2001 season will occur on June 16, 2001,³ after which all of the bartenders will be laid off. Although the bartenders received no "formal" notification of the decision to outsource, they learned of it approximately 3 weeks before the hearing in this matter. The record further reveals that the Employer plans to commence the 2001/2002 season at the existing facility on September 17, 2001, with food and bartending services being provided by a catering contractor.⁴ The first performance at the new theater is scheduled for December 1, 2001.

Based upon the above and the record as a whole, I find that a fundamental change in the Employer's operations, the outsourcing of the sale of alcoholic beverages, is imminent and sufficiently certain that it would not effectuate the purposes of the Act to conduct an election at this time. In this regard, I note that the decision to outsource the service of alcoholic beverages is to be effective on a date certain, that there is no evidence of any inconsistent action by the Employer, and that there is no evidence that the bartenders' employment relationships with the Employer will survive this change in operations. *Larson Plywood Co.*, 223 NLRB 1161 (1976); see also *Douglas Motors Corp.*, 128 NLRB 305 (1960). Accordingly, I shall grant the Employer's motion, and dismiss the petition.⁵

² I have been administratively advised by the Employer after the close of the hearing, that although it has received no conforming bids, it has received one "firm expression of interest" from a bidder who has "clearly indicated a willingness to enter into an agreement on terms which would be minimally acceptable to the [Employer]."

³ Due to ongoing construction, unlike past years, no events will be presented this summer.

⁴ The May 4, 2001 Request for Proposal specifies that the contract will be for a 3-year term beginning on July 1, 2001, and that "services must commence on September 17, 2001."

⁵ In view of my determination herein, I find it unnecessary to pass upon the Employer's contention, disputed by the Petitioner, that Michael Connors and Phil Nowek should be excluded from the unit as statutory supervisors.

ORDER

It is hereby ordered that the petition filed in this matter be, and it hereby is, dismissed.⁶

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 20, 2001.

Dated at Hartford, Connecticut this 6th day of June, 2001.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

362-3337-0000

⁶ As the Employer correctly concedes, if the Employer does not implement its plan to outsource the service of alcoholic beverages as indicated, the petition is subject to reinstatement upon a proper showing by the Petitioner of such changed circumstances. *Larson Plywood Co.*, supra, footnote 2.